

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 71 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BAVA BARKULLAH NI DARGAH

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for Appellant

GOVERNMENT PLEADER for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/09/97

ORAL JUDGEMENT

This appeal is directed against an interlocutory order dated January 4, 1988 passed by the City Civil Court, Ahmedabad, below Notice of Motion in Civil Suit No. 5554 of 1987 filed by the State of Gujarat against the appellant-defendants who are alleged to have encroached upon the suit land and put up structures. The government has claimed to be absolute owner of the suit land which is said to be reserved for the purpose of cemetery under section 38 of the Bombay Land Revenue

Code. The land was used for the aforesaid purpose by the persons of Muslim community and the defendants were only supposed to administer the cymetry but they had no right to put up any construction on the suit land or to use or permit the suit land to be used for any other purpose.

2. After hearing the parties, the trial court passed the order under appeal restraining the appellant-defendants from making any construction and/or improving on any part of the suit land without obtaining necessary permission from the Charity Commissioner and also restraining the appellant-defendants from letting out any property on the suit land without obtaining necessary permission of the Charity Commissioner, and further restraining them from acquiring or receiving any rent or consideration in respect of any property on the suit land.

3. Learned counsel for the appellant-defendants is not present when the matter is called out, but perusing the memo of appeal, it appears that the appellant-defendants have contended that the Civil Court had no jurisdiction to entertain the suit and therefore, to grant injunction. Looking to the subject matter of the suit and contentions of the parties, it can safely be said that the preliminary question raised by the appellant-defendants would be a mixed question of law and facts which will have to be decided after evidence is led at the trial. Moreover, interim injunction is not in the form of an absolute prohibition, but it merely requires the appellant-defendants to obtain permission of the Charity Commissioner to undertake any activity on the suit land.

4. In view of the aforesaid discussion, the order under appeal does not call for any interference and the appeal, therefore, deserves to be dismissed. The appeal is accordingly dismissed with no order as to costs.

Amp/-